IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 34 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DISTRICT COLLECTOR JUNAGADH

Versus

GHANSHYAM SALES CORPORATION THRO'ITS PARTNER KIRITKUMAR

Appearance:

1. Special Criminal Application No. 34 of 2003

MRS ML SHAH ADDL.PUBLIC PROSECUTOR

for Petitioner No. 1-3

MR H.S.MULIA for Respondent No. 1

MR VIKRAMSINGH GOHIL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 19/01/2005

ORAL JUDGEMENT

1. The present petition has been preferred against the judgment and order passed by the Sessions Court, Junagadh dated 12th February 2002 in Criminal Appeal No.67 of 1999, whereby the order of confiscation passed by the Collector, Junagadh district under Section 6-A of the Essential Commodities Act, 1955, dated 17th July 1999

was modified to the effect that instead of confiscation of 40% of the quantity of groundnut, it shall be 20% of the total quantity.

2. Learned APP mainly submitted that the order passed by the Collector, Junagadh district of confiscation of 40% of groundnut, which comes to 3744 kg., valued at Rs.56,160/-, was absolutely true and correct and in consonance with the facts and law. A well reasoned order was passed by the Collector, Junagadh district dated 17th July 1999 under Section 6-A of the Essential Commodities Act, 1955. The said order was challenged by the respondent (original appellant) before the Sessions Court, Junagadh vide Criminal Appeal No.67 of 1999 and the Sessions Court, Junagadh, without assigning any reason and without pointing out any error on the part of the Collector, has reduced the percentage of confiscation from 40% to 20%. No reasons have been assigned by the Sessions Court, Junagadh. Infact, looking to the facts and circumstances, the order of confiscation by 40% of the groundnut was absolutely justified and without assigning any reason, the said quantity of confiscation has been reduced by the Sessions Court, Junagadh from 40% to 20%. The said order of the Sessions Court, Junagadh is a non-speaking order and, therefore, the same deserves to be quashed and set aside. It is submitted by the learned APP that the matter may be remanded to the Sessions Court for the early disposal of the case on merits and a direction may be given to the lower appellant Court to dispose of the Criminal Appeal No.67 of 1999 within time bound schedule.

3. Though the learned counsel appearing for the respondent is absent when the matter was called out in the morning, the Court kept the matter in the second half. Even in the second half, the learned counsel appearing for the respondent is absent. Nonetheless, there is similarly situated a group of matters. Orders have been passed in all those matters. There is no reason for this Court to wait for the learned counsel appearing for the respondent. Looking to the facts and circumstances of the present case, and keeping in mind the arguments of the learned APP and looking to the nature of order passed by the Sessions Court, Junagadh in Criminal Appeal No.67 of 1999, no reasons have been assigned by the lower appellate Court for reduction of percentage of confiscation. A non-speaking order has been passed. The order of confiscation passed under Section 6-A of the Essential Commodities Act, 1955 by the Collector, Junagadh is a well reasoned order. The violation of the provisions of the law has been pointed out. The percentage of confiscation, which has been

reduced from 40% to 20% is without assigning any reason.

4. I have perused the order of seizure, order of confiscation passed by the Collector, Junagadh district dated 17th July 1999 and the order passed by the Sessions Court, Junagadh dated 12th February 2002 in Criminal Appeal No.67 of 1999. No reasons have been assigned by the Sessions Court, Junagadh for reduction of the quantity of confiscation. The percentage of confiscation has been reduced from 40% to 20% without assigning any reason. Though the learned APP has taken this Court, to the fine nicety of seizure order, order of confiscation and other material on record, but as this Court is remanding the matter to the Sessions Court, Junagadh, it is not necessary for this Court to go into rest of the details of the matter.

5. In view of the aforesaid facts, the order passed by the Sessions Court, Junagadh dated 12th February 2002 in Criminal Appeal No.67 of 1999 is hereby quashed and set aside, as no reasons have been assigned or no error, in order passed by the Collector, Junagadh district is pointed out for reduction of percentage of confiscation of goods from 40% to 20%. Infact, as held by Hon'ble the Apex Court in Notified Area Committee Vs. Additional Director, Consolidation and Ors., reported in (2002) 10 SCC 87:

> "reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the order which are liable to be challenged in the superior Court."

The Sessions Court, Junagadh is directed to decide the Criminal Appeal afresh. The matter is remanded for its early disposal. The Sessions Court, Junagadh shall decide the Criminal Appeal as early as possible and practicable, preferably within six months from the date of receipt of the writ of this Court. Rule is made absolute with no order as to costs.

(D.N.Patel, J.)
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